IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

CRP.No. 294 of 2007()

AGAINST THE ORDER DATED 09/02/2007 IN IA. 1011 /2006 IN OS.89/2006 of PRL.S.C.,THALASSERY

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REVN. PETITIONER: REVISION PETITIONER/RESPONDENT/PLAINTIFF

V.SARADA,W/O.RAGHAVAN,VANGATTERI HOUSE, MURINGERI P.O,KANNUR DISTRICT.

BY ADV. SRI.K.C.SANTHOSHKUMAR
SMT.K.K.CHANDRALEKHA
SRI.SUDHEESH THAROL

RESPONDENT : RESPONDENT/PETITIONER/DEFENDANT

CHOLAMANDALAM INVESTMENT & FINANCE CO. LTD,DARE HOUSE NO.2 (OLD NO.234),N.S.C BOSE ROAD, CHENNAI,REP.BY ITS BRANCH MANAGER,KOZHIKODE.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.860/2007 IN CRP.NO.294/2007

DISMISSED

28.11.2007 SD/= M.N.KRISHNAN, JUDGE.

/TRUE COPY/

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M.N. KRISHNAN, J.

C.R.P.NO.294 OF 2007 - G

Dated this the 28th day of November, 2007.

O R D E R

This civil revision petition is preferred against the order of the Subordinate Judge, Thalassery in I.A.No.1011/2006 in O.S.No.89/2006. It is an application filed by the defendant in the suit for referring the matter to the arbitration. The plaintiff in the suit had taken a vehicle on the basis of the hire purchase agreement and it is the grievance of the plaintiff that the vehicle had been seized unauthorisedly and she had filed a suit. The question to be considered is whether the matter is arbitrarable or not. A certified copy of the loan agreement between the parties had been produced before the court and clause 23 of the said agreement clearly states about the factum that the matter has to be referred to an arbitrator when disputes, differences or claims arise out of the agreement. It is true that the Apex Court has held that if the agreement is vitiated by fraud, the question of referring to the arbitrator does not arise because it will be against the spirit of the public policy. A mere recital in the counter statement that the document is concocted is not sufficient to hold

that it is a fraudulent one. So far as arbitrability and other factors are concerned, it is well settled by the decision of the Apex Court that it can be looked into by the Arbitrator when such a contention is raised. The only taboo is that if it is vitiated by fraud, it cannot be enforced through the arbitration clause. Except the mere use of the word concoction, there is nothing on record to prove that it has been fraudulently created. Admittedly, plaintiff is a beneficiary for the reason that she has availed of the hire purchase and had hence using the vehicle. On default of the same, it has been taken out from her as per the terms of the agreement. The court below has considered the entire matter in the correct perspective and had arrived at a decision that it is an arbitrable matter and therefore, allowed the petition and it referred the matter to the Arbitrator.

I do not find any illegality or irregularity committed by the court below and, therefore, the civil revision petition is dismissed.

M.N. KRISHNAN, JUDGE.

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